

15. Intellectual Property Rights

INTRODUCTION

- IP refers to creations of the human mind such as inventions, designs, artistic/literary works, symbols, names, and images used in commerce.
- It is the result of intellectual activities and creativity.
- IP is intangible property but protected by law like tangible property.
- Statutory rights granted under specific legislations.
- Give creators/inventors the exclusive right to use, exploit, and benefit from their creations.
- Creators can prevent others from unauthorized use of their work and negotiate commercial terms.
- IPR rewards creativity and innovation, encouraging further progress.
- Backbone of economic growth and national development.
- Promotes innovation, industrial progress, and competitiveness in the global market.
- Helps in generating revenue and building strategic alliances for socio-economic and technological growth.
- Protects investments of time, money, and effort by inventors and businesses.
- Supports healthy competition and contributes to overall economic development.
- Copyright & Related Rights – protection for authors, artists, performers, producers, and broadcasters.
- Trademarks & Service Marks – protect brand identity, goods, and services.
- Geographical Indications (GI) & Appellations of Origin – protection for products linked to specific regions.
- Industrial Designs – protection for unique designs and appearances of products.
- Patents – protection for inventions, including new plant varieties.
- Layout-designs of Integrated Circuits – protection for semiconductor chip designs.
- Undisclosed Information / Trade Secrets & Test Data – protection for confidential business information.
- Promotes efficient use and commercialization of technology.
- Helps in strategic planning in changing industrial and competitive environments.
- Strengthens link between innovation and market value.
- IPR gives exclusive rights for a limited period (varies by type – e.g., patents, copyright, trademarks).
- After expiry, the work enters public domain.
- Encourages creativity, innovation, and research.
- Affects economic, industrial, and social progress.
- Lack of IPR awareness leads to:
 - Infringement & piracy
 - Loss of inventions and financial setbacks
 - Decline in national intellectual growth
- Essential to educate stakeholders: policymakers, farmers, academia, industry, researchers, and consumers.
- Particularly crucial for agrarian economies like India, to support home-grown innovations and protect them globally.

REGULATORY FRAMEWORK

- Copyright Act, 1957
- Patents Act, 1970
- Trade Marks Act, 1999
- Geographical Indications (Registration and Protection) Act, 1999:
- Designs Act, 2000

NATURE OF INTELLECTUAL PROPERTY

➤ Intangible Rights over Tangible Property

- Unlike land, buildings, or machinery, IP is intangible in nature.
- It provides protection to ideas, inventions, designs, symbols, and information.
- When commercialized, IP enables creators/owners to earn profits from their works.

➤ Right to Sue

- IP is a legal property right and can be inherited, purchased, gifted, sold, licensed, pledged, or entrusted.
- Owners hold the exclusive right to take legal action against unauthorized use.
- They can sue for infringement and claim damages or compensation.

➤ Rights and Duties

- IP ownership confers:
 - Positive rights: to create, reproduce, sell, license, or commercially exploit.
 - Negative rights: to prevent others from unauthorized use.
- The owner enjoys benefits but must also comply with statutory obligations.

➤ Coexistence of Different Rights

- A single subject matter may be protected by multiple IPRs. Examples:
 - An innovation can be patented, while its visual representation may be copyrighted.
 - A design may qualify both as a trademark and under the Design Act.
- Similarities exist between:
 - Patents & Industrial Designs
 - Trademarks & Geographical Indications (GI)
- Some rights are positive (right to exploit) while others are negative (right to prevent use).

➤ Exhaustion of Rights

- Governed by the Doctrine of Exhaustion (First Sale Doctrine).
- Once the IP holder authorizes the first sale of a product, their control over resale is exhausted.
- The owner cannot restrict subsequent resale of the same goods.
- This ensures the free flow of goods in the marketplace.

➤ Dynamism of IP

- IP law is continuously evolving with technological and scientific advancements.
- New areas of protection have emerged, such as:
 - Biopatents (biotechnology inventions)

- Software Copyright
- Plant Variety Protection
- Dynamism exists across legislative, administrative, and judicial levels, reflecting IP's increasing role in the global economy.

Need of Intellectual Property

➤ Recognition of Effort & Investment

- Every invention or creation requires time, labour, money, knowledge, and resources.
- Protecting IP acknowledges and honours the creator's effort and investment.
- Without protection, creators risk losing both economic benefits and credit for originality.

➤ Historical Development

- The term "*Intellectual Property*" became common only in the 19th century, though related legal principles existed earlier.
- In the 20th century, IP protection gained global importance, especially with international trade and technology growth.

➤ International Recognition & Protection

- To ensure uniformity and enforcement, international frameworks were established.
- Key milestone: 1967 – Establishment of WIPO (World Intellectual Property Organization) as a UN body.
- Since then, the concept of IP has gained global acceptance and harmonization.

➤ Global System of IP Governance

IP protection today is supported by international treaties and organizations, such as:

- World Intellectual Property Organization (WIPO) – promotes global IP protection.
- World Trade Organization (WTO) – administers TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights).
- European Union (EU) – ensures regional harmonization of IP laws.
- World Customs Organization (WCO) – prevents cross-border movement of counterfeit goods.
- UNCITRAL (United Nations Commission on International Trade Law) – develops model laws affecting IP in trade.

➤ Why IP is Needed Today

- Encourages innovation, creativity, and investment.
- Provides exclusive rights to recover costs and profit from innovation.
- Promotes international trade and economic growth.
- Builds trust and collaboration among nations, industries, and creators.

Scope of Intellectual Property

➤ Two Broad Categories of IP

- Industrial Property
 - Covers commercial and technological creations.
 - Includes: Patents, Inventions, Trademarks, Trade names, Biodiversity rights, Plant breeding rights, and other industrial interests.

- Patent: grants the holder the exclusive right to exploit an invention (new product, process, or tool) for commercial benefit.
- Copyright
 - Protects expressions of ideas, not the ideas themselves.
 - Applies to literary, artistic, musical, dramatic, audiovisual, technological, and scientific works.
 - Duration: Author's lifetime + 60 years after death.
 - Unlike patents, no administrative registration procedure is mandatory.

➤ Key Features of IP Protection

- Patents → Protect novel inventions & industrial applications.
- Copyright → Safeguards creativity in literature, art, and media.
- Industrial Property → Ensures commercial exclusivity for innovations and business identity.
- Overall → IP ensures creators benefit legally and commercially from their work.

General Agreement on Trade in Services (GATS)

➤ Introduction

- Adopted: 1995 (Uruguay Round of WTO negotiations).
- First-ever legally binding, multilateral framework for global trade in services.

➤ Objectives

- Establish a trustworthy and transparent system for international trade in services.
- Ensure non-discrimination among members (Most-Favored Nation principle).
- Enhance economic growth through binding commitments.
- Promote progressive liberalisation of services trade.

➤ Structure of GATS

- Primary text → General principles & obligations.
- Annexes → Sector-specific rules.
- Schedules of Commitments → Market access commitments by each member.
- Exemptions List → Cases where MFN principle does not apply.

➤ Modes of Supply of Services

1. Mode 1 – Cross-border supply: e.g., consultancy via internet.
2. Mode 2 – Consumption abroad: e.g., tourism, foreign education.
3. Mode 3 – Commercial presence: e.g., foreign company setting up a branch.
4. Mode 4 – Presence of natural persons: e.g., temporary movement of professionals.

➤ Significance of Services in Global Trade

- Services = $\frac{2}{3}$ of global production & employment.
- Only ~25% of trade in balance-of-payments terms, but ~50% of value-added trade.
- Services are essential inputs for manufacturing and global commerce.

➤ Key Pillars of GATS

- Openness & Predictability of rules and regulations.
- Progressive Liberalisation → gradual expansion of market access and national treatment for foreign services/providers.

Note: GATS does not mean deregulation – members retain the right to regulate services for national policy goals.

➤ Special Provisions for Developing Nations

- Article IV: Strengthens participation of developing countries by:
 - Improving access to distribution channels & information networks.
 - Supporting capacity building in domestic service sectors.
 - Ensuring liberalisation in sectors of export interest to them.
- Article XIX: Progressive liberalisation must consider different levels of development.
- Developing nations may:
 - Open fewer sectors gradually.
 - Retain policies for economic integration & balance of payments stability.
 - Control access to telecom and transport networks.
- WTO Secretariat can provide technical assistance to developing members.

➤ Overall Importance

- First comprehensive framework for global service trade governance.
- Balances free trade with policy flexibility.
- Empowers developing nations while promoting globalisation.
- Strengthens services as a core pillar of international trade and economic growth.

World Intellectual Property Organization (WIPO)

➤ Introduction

- Established: 1970 (after WIPO Convention 1967).
- UN Specialized Agency since: 1974.
- Headquarters: Geneva, Switzerland.
- Mandate: To promote protection of IP worldwide through cooperation among states and with other international bodies.
- Mission: Foster innovation, creativity, and economic, social, and cultural development via a fair and efficient international IP system.

➤ Functions of WIPO

- Services: Provides global systems for patents, trademarks, designs, appellations of origin; offers IP dispute resolution.
- Law-making: Develops international IP treaties, harmonizes laws to match evolving needs.
- Infrastructure: Builds databases, networks, and digital tools to simplify IP transactions and information sharing.
- Development: Provides technical & legal assistance, training, and capacity-building for developing nations.

➤ Role in Global Trade

- In 1996, WIPO signed a cooperation agreement with WTO, expanding its role in IP within the context of globalization and trade.
- Helps both developed and developing countries strengthen IP protection systems.

➤ Major Legal Frameworks under WIPO

A. Patent & Design Systems

- Patent Cooperation Treaty (PCT): Enables filing of one international patent application to seek protection in multiple countries.
- Locarno Agreement: Provides international classification for industrial designs.
- Hague System: Simplifies international registration of up to 100 industrial designs across 90+ countries.

B. Trademark Systems

- Madrid Agreement & Protocol: Allow international registration of marks through a single application.
- Nice Agreement: Provides an international classification system for goods & services in trademark registration.
- Vienna Agreement: Establishes classification of figurative elements in marks.

C. Copyright & Related Rights

- WIPO Copyright Treaty (WCT): Extends Berne Convention to the digital environment, covering software and databases.
- WIPO Performances and Phonograms Treaty (WPPT): Protects rights of performers and producers of sound recordings, especially in digital contexts.
- Standing Committee on Copyright and Related Rights (SCCR): Works on harmonization of copyright law globally.

D. Geographical Indications

- Lisbon Agreement/System: Provides international registration for appellations of origin and geographical indications (GI).

E. Traditional Knowledge

- WIPO Intergovernmental Committee (IGC): Negotiates legal instruments for protection of Traditional Knowledge (TK), Traditional Cultural Expressions (TCEs), and Genetic Resources (GRs).

5. Significance of WIPO

- Encourages innovation & creativity worldwide.
- Provides global IP registration systems to save time and cost.
- Assists developing countries in building strong IP frameworks.
- Ensures IP laws evolve with digital technology and globalization.
- Strengthens international cooperation in trade, culture, and science.

Trade-Related Aspects of Intellectual Property Rights (TRIPS)

➤ Introduction

- Adopted under the Uruguay Round of WTO negotiations (1995).
- Links intellectual property (IP) with international trade.
- Establishes minimum standards for protection and enforcement of IP rights among WTO members.
- Makes IP a subject of multilateral trade law, not just domestic law.

➤ Objectives of TRIPS

- Facilitate global trade in innovation, creativity, and branding.
- Harmonize IP protection worldwide while allowing national flexibility.
- Encourage innovation and technology transfer.
- Prevent disputes by setting common minimum rules and providing a WTO dispute resolution mechanism.

➤ Flexibilities under TRIPS

- Members can adapt IP protection to suit national needs and public policy objectives (e.g., health, education).
- Allows exclusions and exceptions (e.g., compulsory licensing of medicines).
- Balance between:

- Long-term benefits → encouraging innovation.
- Short-term costs → avoiding excessive restrictions on access.

➤ Key Provisions / Issues Covered by TRIPS

1. Application of WTO principles to IP in international trade.
2. Minimum standards of protection → for copyrights, patents, trademarks, geographical indications, industrial designs, layout-designs of integrated circuits, undisclosed information (trade secrets).
3. Enforcement mechanisms → members must provide procedures to protect and enforce IPRs domestically.
4. Dispute resolution → WTO's dispute settlement system applies to TRIPS-related conflicts.
5. Transitional arrangements → phased implementation for developing and least-developed countries.

➤ Significance

- Globalizes IP protection across all WTO member countries.
- Promotes predictability and fairness in trade involving knowledge-based goods.
- Provides developing countries with flexibility to balance innovation incentives and public welfare.
- Strengthens IP enforcement by linking it with WTO trade rules and sanctions.

The Concept of Intellectual Property

- Intellectual Property (IP) = Creations of human mind and intellect.
- Protects information/creativity, not the physical copies.
- IP rights = similar to property rights (movable/immovable), but with:
 - Right to use, transfer, license.
 - Limited duration (for patents, copyright).

➤ Industrial Property

- A type of intellectual property (not related to land/buildings).
- Covers:
 - Inventions (new solutions to technical problems).
 - Industrial designs (aesthetic look of products).
 - Trademarks & Service marks.
 - Trade names & commercial designations.
 - Indications of source & appellations of origin.
 - Protection against unfair competition.
- Recognized under Paris Convention.

➤ Patent

- Monopoly right granted for an invention.
- Invention = new product, process, or technical solution.
- Rights:
 - Exclusive right to make, use, sell, license invention.
 - Can transfer ownership.
- Duration: 20 years from filing date.

- After expiry → invention enters public domain.

➤ **Trademark**

- Protects distinctive signs that identify goods/services.
- Can be: words, letters, numbers, symbols, images, sounds.
- Functions:
 - Differentiates goods/services of one trader from others.
 - Protects trader's goodwill.
 - Prevents consumer confusion.
 - Acts as advertising tool.
- Rights: exclusive use + ability to license.
- Duration: 7 years, renewable indefinitely.

➤ **Copyright**

- Protects expression of ideas (not ideas themselves).
- Covers: literary, dramatic, musical, artistic works; films; sound recordings; broadcasts; computer programs; databases.
- Historical origin: Statute of Anne, 1709.
- In India: Copyright Act, 1957 (amended multiple times, latest 2012).
- Duration:
 - Life of author + 60 years.
 - 50 years for performers' rights (as per TRIPS, amended in 1999).
- Protects: form of expression → words, notes, colours, shapes, arrangements.

➤ **Industrial Designs**

- Protect ornamental/aesthetic aspects of products (shape, pattern, colour).
- Requirements: must be new & original.
- Duration: 5–15 years (depending on law).
- Early laws: UK Act 1787 → India's first Act in 1872.
- Current Indian law: Designs Act, 2000.
- Example: textile designs, packaging shapes, decorative items.

➤ **Geographical Indications (GI)**

- Sign identifying goods originating from a specific place.
- Guarantees quality/uniqueness due to geography, climate, tradition.
- Community right → all producers of region can use it.
- Covered under TRIPS (Arts. 22–24).
- Indian law: GI of Goods (Registration & Protection) Act, 1999, in force since 2003.
- Examples: Darjeeling Tea, Kanchipuram Silk, Kolhapuri Chappal, Bordeaux Wine, Alphonso Mango.

➤ **Trade Secrets**

- Confidential business information that gives competitive edge.
- Examples:
 - Manufacturing processes.

- Marketing strategies.
- Customer lists.
- Supplier networks.
- Protection: indefinite, as long as secrecy is maintained.
- Not registered formally, but protected against misappropriation.

National Intellectual Property Rights Policy, 2016

➤ Background

- Aim: Protect originality of inventors' works.
- IP includes: Copyright, Patents, Trademarks, Trade names, Industrial designs, Merchandise marks.
- Important for:
 - Quality, safety, effectiveness of pharma products.
 - Standard certification and product identification.
- Protects inventions in art, literature, science, and industry.
- India declared the "Decade of Innovation" → led to roadmap for IPR.

➤ Adoption

- Approved by Union Cabinet on May 12, 2016.
- TRIPS-compliant legal structure.
- Balances: development objectives + flexibilities of global IP regime.
- Emphasises:
 - IPR as marketable financial asset.
 - Tool for economic growth.
 - Spreading awareness & innovation culture.

➤ Focus Areas

- Improve access to: healthcare, food security, environmental protection.
- Foster creativity & innovation.
- Promote entrepreneurship.
- Enhance socio-economic and cultural development.

➤ Seven Objectives of the Policy

- IPR Awareness (Outreach & Promotion)
 - Public awareness of economic, social, cultural benefits of IPR.
- Generation of IPRs
 - Stimulate creation of new IPRs in all sectors.
- Legal & Legislative Framework
 - Strong & effective IPR laws.
 - Balance between rights holders & public interest.
- Administration & Management
 - Modernize & strengthen IP offices.
 - Service-oriented administration.
- Commercialization of IPRs
 - Enable creators to get value from their IPRs.
 - Encourage technology transfer & licensing.
- Enforcement & Adjudication

- Strengthen enforcement mechanisms.
 - Improve adjudication of IPR disputes.
 - Combat piracy & infringement.
- Human Capital Development
 - Expand and strengthen IPR teaching, training, research.
 - Build skilled manpower for IP-driven economy.